

## REMARKS

Claims 1-15 stand rejected. Applicant is canceling claims 3, 5, 6, 8, 10, 12, 14 and 15 without prejudice or disclaimer. Claims 2, 4, 9, 11 and 13 have been amended to render them in independent form. As a result, claims 2, 4, 9, 11 and 13 are pending for examination with claims 2, 4, 9, 11 and 13 being independent claims. The amendments made find support in the specification, and do not constitute new matter.

Applicants thank the Examiner for conducting the telephonic interview of September 20, 2004, with the Applicant's attorney. During that interview the examiner suggested incorporating the limitations of claim 9 into claim 2, and possibly narrowing randomizing function to "RAND" as defined on page 6 of the specification in Applicants filing of an RCE or continuing application.

Applicant believes the foregoing amendments comply with requirements of form and thus may be admitted under 37 C.F.R. § 1.116(a). Applicants have amended the dependent claims to put them in independent form. In light of the reasons presented below Applicants believe that the claims are in condition for allowance.

Lastly, admission is requested under 37 C.F.R. § 1.116(a) as presenting rejected claims in better form for consideration on appeal.

Amendment under 37 C.F.R. 1.113  
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Claims 2 and 11, stand rejected under 35 U.S.C. §103(a) as being unpatentable over Fayyad et al. ("Fayyad") (US Patent 6,012,058) in view of Bossemeyer, Jr. et al. ("Bossemeyer") (US Patent 6,4510,427 B1) and Choy ("Choy") (US patent 5,960,431). The Examiner states that it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the teachings of the cited references because Acharya's teaching would have allowed Fayyad's to generate high confidence error bounds for the approximate answer and an efficient maintenance technique for maintaining the statistical summaries in the presence of updates to the database as suggested by Acharya. Applicants respectfully traverse the Examiner's grounds for rejection.

In claims 2 and 11 Fayyad et al. was cited against Applicants. Applicants respectfully submit that the application of the Fayyad reference in this application in light of the STATEMENT CONCERNING COMMON OWNERSHIP submitted below is improper. Applicants request that the examiner remove the Fayyad reference from consideration in the examination of the application. Applicants submit that the Fayyad reference should be removed for the following reasons:

"Effective November 29, 1999, subject matter which was prior art under former 35 U.S.C. 103 via 35 U.S.C. 102(e) is now disqualified as prior art against the

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claimed invention if that subject matter and the claimed invention "were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person." This change to 35 U.S.C. 103(c) applies to all utility, design and plant patent applications filed on or after November 29, 1999." MPEP 706.02(I)(1)

Accordingly the Applicants submit the following:

STATEMENT CONCERNING COMMON OWNERSHIP (Fayyad)

Applicants Representative of record submits that Fayyad et al. can not be considered to be prior art for rejecting the claims of this application. Fayyad can not be prior art because U.S. Patent Application Number 09/861,960 and the subject matter of the Fayyad reference, were at the time the invention of application 09/861,960 was made, subject to common ownership and an obligation of assignment to Microsoft Corporation. MPEP 706.02(I)(2) II Evidence Required to Show Common Ownership. OG Notice, 1241 OG 96.

Applicants submit that the above STATEMENT CONCERNING COMMON OWNERSHIP by Applicants Representative of record is sufficient. MPEP 706.02(I)(3).

Accordingly, the Applicants submit that Claims 2 and 11 are not unpatentable over Fayyad in view of Acharya.

Claims 4, 9 and 13, stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bossemeyer, Jr. et al. ("Bossemeyer") (US Patent 6,4510,427 B1) in view of Choy ("Choy") (US patent 5,960,431) and Waas et al. ("Waas") (Counting, Enumerating, and Sampling of Execution Plans in a Cost-Based Query Optimizer). The Examiner states that "it would have been obvious to one of ordinary skill in the art at the time of the

invention was made to have combined the teachings of the cited references because Waas et al.'s generation of random SQL statements would have allowed Bossemeyer, Jr. et al.'s in combination with Choy's to quickly generate random statements to be tested." Applicants respectfully traverse the Examiner's grounds for rejection.

In claims 4, 9 and 13 Waas et al. was cited against Applicants. Applicants respectfully submit that the application of the Waas reference in this application in light of the STATEMENT CONCERNING COMMON OWNERSHIP submitted below is improper. Applicants request that the examiner remove the Waas reference from consideration in the examination of the application. Applicants submit that the Waas reference should be removed for the following reasons:

"Effective November 29, 1999, subject matter which was prior art under former 35 U.S.C. 103 via 35 U.S.C. 102(e) is now disqualified as prior art against the claimed invention if that subject matter and the claimed invention "were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person." This change to 35 U.S.C. 103(c) applies to all utility, design and plant

patent applications filed on or after November 29,  
1999." MPEP 706.02(I)(1)

Accordingly the Applicants submit the following:

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STATEMENT CONCERNING COMMON OWNERSHIP (Waas)

Applicants Representative of record submits that Waas et al. can not be considered to be prior art for rejecting the claims of this application. Waas can not be prior art because U.S. Patent Application Number 09/861,960 and the subject matter of the Waas reference, were at the time the invention of application 09/861,960 was made, subject to common ownership and an obligation of assignment to Microsoft Corporation. MPEP 706.02(l)(2) II Evidence Required to Show Common Ownership. OG Notice, 1241 OG 96.

Applicants submit that the above STATEMENT CONCERNING COMMON OWNERSHIP by Applicants Representative of record is sufficient. MPEP 706.02(l)(3).

Accordingly, the Applicants submit that Claims 4, 9 and 13 are not unpatentable over Bossemeyer in view of Choy and Waas.

Applicants have amended dependent claims 2, 4, 9, 11 and 13 to include the limitations of their parent claims

## CONCLUSION

Accordingly, in view of the above amendment and remarks it is submitted that the claims are patentably distinct over the prior art and that all the rejections to the claims have been overcome. Reconsideration and reexamination of the above Application is requested. Based on the foregoing, Applicants respectfully request that pending claims 2, 4, 9, 11 and 13 be allowed, and that a timely Notice of Allowance be issued in this case. If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is requested to call the Applicant's attorney at the telephone number listed below.

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If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicants hereby request any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, the Commissioner is hereby authorized to charge the required fees, or credit any overpayments, to Deposit Account No. 50-0463.

Respectfully submitted,

Microsoft Corporation

Date: 10/12/04

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**CERTIFICATE OF MAILING OR TRANSMISSION  
UNDER 37 C.F.R. § 1.8(a)**

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